

Service Date: August 1, 1980

PROPOSED ORDER NO. 4659

DEPARTMENT OF PUBLIC SERVICE REGULATION
MONTANA PUBLIC SERVICE COMMISSION

In the matter of the complaint of) UTILITY DIVISION
the City of Hamilton, Montana) DOCKET NO. 6805
against the Valley Water Company) ORDER NO. 4659

APPEARANCES

FOR THE COMPLAINANT:

Donald W. McKenna, City Attorney, Main Street, Hamilton,
Montana 59840.

FOR THE DEFENDANT:

Jeremy G. Thane, Attorney at Law and Managing Partner, Valley
Water Company, P.O. Box 4747, Missoula, Montana 59806.

FOR THE COMMISSION:

Robert F. W. Smith, Staff Attorney, 1227 11th Avenue, Helena,
Montana 59601.

BEFORE:

Commissioner JAMES R. SHEA, Hearing Examiner

The Examiner, having taken evidence and being fully advised
in the premises, makes the following findings, conclusions
and order:

FINDINGS OF FACT

1. On March 3, 1980, the City of Hamilton (City) filed a
complaint and request for hearing with the Montana Public
Service Commission (Commission). The substance of the
Complaint was that the Valley Water Company (Company) was
creating an emergency situation because of its reluctance to
improve and replace its mains beneath U.S. Highway 93

(highway) where that highway runs through Hamilton. The immediate cause of the emergency was that the Montana Department of Highways (Department) was commencing reconstruction on a portion of the highway between Pennsylvania Avenue and River Street in the City of Hamilton, and the rest of the highway through the City was scheduled for reconstruction and widening as soon as this water main problem was resolved.

2. The Commission assigned this Complaint Docket No. 6805, and pursuant to its procedural rules regarding complaints sent a copy to the Company for its Answer. The Answer said in substance that the Company would be glad to cooperate with the City, but lacked the funds to do so. Also, the answer took issue with several specific allegations of the City, as well as requesting that the Commission decide the issue of fire hydrant ownership.

3. The issues in Docket No. 6805 being joined, on April 22, 1980, the Commission gave notice that it had scheduled the matter for a public hearing in the Hamilton City Council Chambers, at 10:00 a.m. on Thursday, May 15, 1980.

4. At the May 15th hearing, the City introduced the testimony of four persons:

Thomas J. Peterson, Mayor of Hamilton;

Lloyd Greenup, Volunteer Fire Chief;

Duane Hedman, Chairman, Hamilton Parking Commission; and
Loren Lazarini, Chairman, Community Development Council.
Mr. Thane made a statement on behalf of the Company.

5. Mayor Peterson testified first, stating that the problem spoken to in the Complaint had three ramifications as far as public safety in the City: 1) fire protection, 2) traffic

safety, and 3) general business health or an adequate tax base for the City. He continued that an emergency situation existed with regard to fire protection beyond River Street. Mayor Peterson said that although the construction work has started, he was unaware of the full ramifications of the problem until now, and did not think of coming to the Commission because it was a local problem. The Company has explained their side of the problem (funding) and Mayor Peterson requested that the Commission might make exception to its rules in this case to allow the Company to get the necessary funds for construction. The Mayor concluded by saying that he recognized that the Commission might not be able to affect the construction which the Department had already contracted and which was underway; however, he said that the City did need the problem solved for the rest of the highway as it runs through the City.

6. Chief Greenup explained the position of the City Fire Department and gave details of what corrective measures the City had taken to ensure fire protection on the River Street Pennsylvania Avenue Section of the highway. Mr. Greenup said that the former Mayor's consent to the River Street - Pennsylvania Avenue construction was given without consulting the Fire Department and over the Department's objection when it became aware.

7. Chairman Hedman explained the ramifications of the problem for an adequate flow of traffic in the City, especially if the southern section of the highway reconstruction were delayed. The Department has promised that it will delay further reconstruction of the highway until the water main situation south of River Street (the mains are in worse condition there) is corrected.

8. Chairman Lazarini presented the general ramifications of

the problem for planning for orderly growth in the City and retaining a viable downtown area, with reasonable fire insurance rates and traffic access.

9. Mayor Peterson was recalled to explain the Letter of Consent to the Department signed by the former mayor. At the close of its case, the City Attorney stated that the City joined the Company in seeking a satisfactory resolution to the hydrant ownership question.

10. Mr. Thane gave a thumbnail sketch of the history of the City water system; from Marcus Daly to the Montana Power Company, to Mr. Thane's father in 1941, to Mr. Thane and his relatives at his father's death. The Company's dilemma is that it was their opinion that the Commission would not allow a rate increase until capital improvements were made and in place, while lending institutions would not provide the funds for such improvements until a rate increase was assured. Mr. Thane admitted that he had not pursued the matter with the Commission to determine whether some compromise might be made. Mr. Thane also allowed that his primary concern is his law practice and that he has not tended to the Company's affairs as diligently as he should have.

11. There was general agreement on the part of the City Officials that they would support a rate increase for the Company to perform the necessary work.

DISCUSSION

At the close of the hearing in this matter there was general agreement amongst the City, the Company and representatives of the Commission that a rate increase in the near future perhaps could solve this problem. However, it is the Hearing

Examiner's duty to make clear to all parties that this may well be easier said than done. The Montana statutes have yet to be fully explored on the question of rate increases to private utilities to finance capital improvements prior to completion of the improvements {MCA 69-3-109}; also, the views of the full Commission are yet to be explored. Undoubtedly, the Montana Consumer Counsel will have concerns. Also, the specifics of lending institutions' requirements are not known. One thing is clear however, and that is the necessity of the water Company and the City to come to work together.

On the matter of fire hydrant ownership, the Commission is not aware of any policy in Montana law, one way or the other. The Commission's general policy is to allow municipalities and water companies to come to their own arrangements on hydrants as long as adequate service is provided at reasonable rates. In this case, since it is unclear who does in fact own the hydrants, it seems that agreement could be reached that either: 1) the City could assume ownership of the hydrants; or 2) the Company could assume ownership of the hydrants and charge the City an agreed-upon fee. In either case, the Company and its personnel would be the logical parties to perform maintenance on fire hydrants. As fire protection is a governmental, rather than proprietary function of the City, it is the duty of the City and its taxpayers -- rather than the Company and its customers -- to bear the burden of fire hydrant related costs. Either solution, however, would be acceptable to the Commission. Perhaps the parties might want to contact other private water utilities, to obtain suggestions.

CONCLUSIONS OF LAW

1. The Commission properly exercises jurisdiction over the parties and several of the enumerated items on Docket No. 6805.
2. Proper notice of the public hearing in this matter was given to all interested persons.
3. The action taken herein is reasonable and just.

ORDER

NOW THEREFORE IT IS ORDERED by Commissioner James R. Shea, Hearings Examiner, in this proceeding, that a Brief Quarterly Progress Report be filed with the Commission by both the City and the Valley Water Company. This report should show: 1) Progress to date; 2) A Time Table as to ultimate completion which would be ultimately satisfactory to the City - the Water Company and the Consumer. First report due September 1, 1980. It is further ordered that this matter may be further Reviewed if the Valley Water Company fails to bring a rate increase request before the Commission in a timely fashion so that the matters at issue in this Complaint can be properly addressed. In all other respects, Docket No. 6805 IS CLOSED. It is strongly urged that the City of Hamilton and the Valley Water Company work together in a consistent manner towards an early satisfactory solution of the problems facing both the Valley Water Company and the City of Hamilton in order that the General Public be better served.

IT IS FURTHER ORDERED, pursuant to 1-1.6(2)-P6190, ARM, that this is a proposed order. Any party shall have the opportunity to file exceptions to this initial decision, present briefs and make oral arguments before the entire Commission, provided such exceptions, briefs and requests for oral argument are presented to this Commission within twenty (20) days of the service date of this order.

IT IS FURTHER ORDERED that a full, true and correct copy of this order be sent forthwith by first class mail to the Applicant and all other appearances herein.

DONE at Helena, Montana, this 1st ,day of August 1980.

JAMES R. SHEA, Commissioner
Hearing Examiner

ATTEST:

Madeline L. Cottrill
Secretary

(SEAL)